



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

<hr/> New England Police Benevolent Association, Inc. Local 50	*	
	*	
Petitioner	*	
and	*	Case No: P-0787
	*	
State of New Hampshire, Department of Safety, DMV	*	
	*	
Respondent	*	Decision No. 2006-154
<hr/> New England Police Benevolent Association, Inc. Local 55	*	
	*	
Petitioner	*	
and	*	Case No: P-0788
	*	
State of New Hampshire, Department of Safety, DMV	*	
	*	
Respondent	*	

**ORDER ON STATE OF NEW HAMPSHIRE,
DEPARTMENT OF SAFETY, DMV MOTION TO QUASH**

On September 14, 2006 the State Employees' Association, SEIU Local 1984, AFL-CIO, CLC (the "SEA") filed a written request for the PELRB to issue two subpoenas duces tecum. These subpoena requests were reviewed at the September 14, 2006 informal pre-hearing conference. Per agreement of the parties, on September 15, 2006 the PEPLRB issued a subpoena duces tecum to Director Beecher and Mr. Ouellette. The State of New Hampshire, Department of Safety, DMV, ("DMV"), through Attorney Kelloway, agreed to accept service via email and waive formal service, but she otherwise reserved any and all objections. On September 18, 2006 the DMV filed motions to quash both subpoenas. On September 19, 2006 the SEA filed its objections to the motions to quash.

Per its objections, the SEA has withdrawn without prejudice Ouellette subpoena request #9 and Beecher subpoena requests #3, 4 and 5. The only subpoena requests still at issue are Ouellette subpoena requests #1 and 2. Ouellette request #1 seeks: "any and all evaluations conducted by the New Hampshire (sic) concerning the Division of Motor Vehicles, Highway Patrol Officers and Corporals." Request # 2 seeks: "any and all disciplinary files concerning the New Hampshire Division of Motor Vehicles, Highway Patrol Offices (sic) and Corporals."

The principal issues to be heard in this case are: 1) whether via the certification and modification pleadings it has filed, NEPBA is entitled to have its application for the creation of two new units considered on the merits and elections scheduled; 2) whether Pub 302.05 (b)(2) specifically precludes NEPBA's modification request; 3) whether NEPBA seeks to have the same bargaining agent represent the proposed rank and file unit and the supervisor's unit and what significance, if any, should be attributed to the fact that the SEA currently acts as a common bargaining agent for supervisor's units and rank and file units; 4) the composition of the proposed units, whether agreement has been reached between NEPBA and the employer as to composition, the SEA's objections to the proposed compositions and the significance and/or impact of SEA objections.

Although NEPBA filed certification petitions on August 3, 2006 and the first informal pre-hearing conference was held in this matter on August 24, 2006, the SEA did not make the current subpoena request until September 14, 2006, only six days before the start of hearing. After allowing for the preparation and issuance of the subpoena, the filing of a motion to quash and objections to the motion to quash, less than one day before hearing remains.

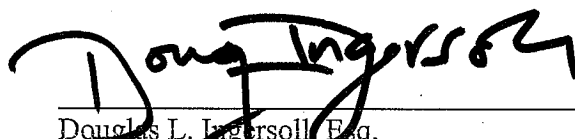
It is true that in general evidence concerning the identity of which employee positions perform and or participate in employee evaluations and discipline is relevant to the supervisory status of particular positions and presumably there are witnesses available to testify on this topic (and other documentary evidence available as well). However, the content of employee evaluations or incidents of discipline is not relevant to these proceedings. Had the SEA filed the instant request earlier in these proceedings there would have been sufficient time for the DMV to review documents and perhaps respond by agreement with appropriately redacted documentation. At this juncture, with hearing scheduled to commence on September 20, 2006 at 9:00 a.m. it is difficult to fathom how the DMV can reasonably be expected to complete such a process now.

Nevertheless, to the extent it can reasonably do so given the current time constraints, the DMV shall produce redacted copies of evaluations and disciplinary records so that only the position of the employee performing the evaluation and issuing the discipline is shown. All other identifying information and content shall be redacted. It is unnecessary to produce multiple or duplicative documents once all the involved positions are identified.

In the event time constraints do not permit the DMV to reasonably complete this document review and redaction process by September 20, 2006 the DMV shall submit an affidavit from Mr. Ouellette. The affidavit shall state, based upon his review of specific documentation, the employee position(s) that performed the evaluations and the employee positions involved in the conduct of disciplinary matters. Mr. Ouellette should otherwise be available as a witness at the hearing.

So Ordered.

Date Issued: September 19, 2006



Douglas L. Ingersoll Esq.
Hearing Officer

Distribution:

Peter Perroni, Esq., NEPBA

Glenn Milner, Esq.

John Krupski, Esq.

Sheri J. Kelloway, Esq., State of NH, Dept. of Safety, DMV